

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 03-36624-GFK

Todd A. Fitterer
dba Todds Oil Distributing
fda Recycling Processors Company
Vera Fitterer,

Debtor(s).

**NOTICE OF HEARING AND MOTION FOR OBJECTING
TO CLAIMED EXEMPTIONS**

TO: THE ABOVE NAMED DEBTOR(S), THEIR ATTORNEYS PERRY BERG AND PAUL BUCHER, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 25, 2004 at 2:30 p.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F. Kishel, Court Room No: 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 2:30 p.m. on October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 4, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). If no response is timely filed, the Court may in its discretion enter an order without a hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This proceeding is a core proceeding. This Chapter 7 case was commenced on September 29, 2003. Charles W. Ries was appointed as Chapter 7 trustee on September 30, 2003. The first meeting of creditors was scheduled for November 14, 2003. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. 522, Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, and 9013-5.

6. Debtor(s) have scheduled certain assets as exempt on Schedule C, including as follows:

Exercise Equipment	11 U.S.C. § 522 (d)(5)	\$500
Firearms ("Firearms") - 30-06, 35 Highpower Rifle, 4 Rugar Handguns, Smith & Wesson Police	11 U.S.C. § 522 (d)(5)	\$2,100

3 Hay Feeders	11 U.S.C. § 522 (d)(5)	\$50
Misc. Hunting Supplies	11 U.S.C. § 522 (d)(5)	\$100
Pickup Topper	11 U.S.C. § 522 (d)(5)	\$100
8N Tractor and attachments; digger, dirt blade, plow, 3 point shovel and tire chains	11 U.S.C. § 522 (d)(5)	\$4,000
Knipco Heater	11 U.S.C. § 522 (d)(5)	\$200
Silver Snoose Cover	11 U.S.C. § 522 (d)(5)	\$35
2 down-filled Sleeping Bags	11 U.S.C. § 522 (d)(5)	\$200
Tools & Equipment- Pressure washer, welder, & log splitter	11 U.S.C. § 522 (d)(5)	\$1,195
Yard Equipment – snow blower, lawnmower, garden tiller, & wheel barrel	11 U.S.C. § 522 (d)(5)	\$3,221

7. Movant objects to the above noted exemptions claimed in that schedule as follows, for the following reasons:

(a) The Debtor(s) have claimed Exercise Equipment; Firearms; 3 Hay Feeders; Misc. Hunting Supplies; Pickup Topper; 8N Tractor & attachments; digger, dirt blade, plow 3 point shovel and tire chains; Knipco Heater; Silver Snoose Cover; 2 down-filled Sleeping Bags; Tools & Equipment – Pressure washer, welder, & log splitter; Yard Equipment – snow blower, lawnmower, garden tiller, & wheel barrel as exempt pursuant to 11 U.S.C. § 522 (d)(5).

The debtor had originally scheduled assets totaling \$3,220 under (d)(5) and Trustee did not object. Debtor has amended to add the above assets and now the scheduled assets exceed the available (d)(5).

Additionally, after the Trustee was contacted by the debtor's brother-in-law disclosing he was holding certain assets not disclosed by the Debtors, the Trustee liquidated certain unscheduled assets. Mrs. Fitterer also contacted the Trustee and disclosed that she asked Mr. Fitterer if certain assets were disclosed; he indicated that it was taken care of. Trustee proceeded to liquidate certain of the assets and only then did the Debtor amend his schedules to disclose and attempt to exempt the assets. Trustee believes that in addition to the reason previously set out, that all of the amended exemptions should be denied on the basis of the Debtor's bad faith, *In re: Bauer*, 298 B.R. 353 (8th Cir. BAP (Minn) 09-16-03).

WHEREFORE, the Trustee requests that the Court deny the following exemptions claimed by the Debtor(s):

1. Exercise Equipment
2. Firearms-30-06, 35 Highpower Rifle, 4 Rugar Handguns, Smith & Wesson Police
3. 3 Hay Feeders
4. Misc. Hunting Supplies
5. Pickup Topper
6. 8N Tractor and attachments; digger, dirt blade, plow, 3 paint shovel and tire chains
7. Knipco Heater
8. Silver Snoose Cover
9. 2 down-filled Sleeping Bags

10. Tools & Equipment – Pressure washer, welder, & log splitter
11. Yard Equipment – snow blower, lawnmower, garden tiller, & wheel barrel

Dated this 1st day of October, 2004.

/e/Charles W. Ries
Charles W. Ries for
MASCHKA RIEDY & RIES
Attorneys for Trustee
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries declares under penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion Objecting to Claimed Exemptions and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries

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Debtor(s).

DECLARATION RE: SERVICE BY MAIL

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 1st day of October, 2004, she served the Notice of Hearing and Motion Objecting to Claimed Exemptions by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Todd A. Fitterer
3852 SW 168th St.
Ellendale, MN 56026

Perry A Berg
Patton, Hoversten & Berg
215 Elm Ave E
PO Box 249
Waseca, MN 56093-0249

Vera Fitterer
308 9th Ave. NE, Apt 22
Byron, MN 55920

Paul W Bucher
DUNLAP & SEEGER, PA.
206 S Broadway #505
PO Box 549
Rochester MN 55903-0549

United States Trustee
1015 U S Courthouse
300 S 4th St
Minneapolis MN 55415

/e/Janet Anderson_____

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In Re:
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Case No: 03-36624-GFK

Debtor(s).

ORDER

At St. Paul, Minnesota this ____ day of _____, 2004.

The above captioned matter came before the Court on the on objection of the Chapter 7 Trustee to exemptions. Appearances were as noted upon the record.

Based upon the files, records, and proceedings herein,

IT IS HEREBY ORDERED,

That the Trustee's objection is sustained and

1. The claimed exemption of Exercise Equipment is denied.
2. The claimed exemption of Firearms - 30-06, 35 Highpower Rifle, 4 Rugar Handguns, Smith & Wesson Police is denied.
3. The claimed exemption of 3 Hay Feeders is denied.
4. The claimed exemption of Misc. Hunting Supplies is denied.
5. The claimed exemption of Pickup Topper is denied.
6. The claimed exemption of 8N Tractor and attachments; digger, dirt blade, plow, 3 point shovel, and tire chains is denied.
7. The claimed exemption of Knipco Heater is denied.
8. The claimed exemption of Silver Snoose cover is denied.
9. The claimed exemption of 2 down-filled Sleeping Bags is denied.
10. The claimed exemption of Tools & Equipment – Pressure washer, welder, & log splitter is denied.
11. The claimed exemption of Yard Equipment – snow blower, lawnmower, garden tiller, & wheel barrel is denied.

BY THE COURT:

Honorable Gregory F. Kishel
United States Bankruptcy Judge